

(b) *Applicability to other nonprocurement instruments.* (1) In accordance with DoD Directive 3210.6, the DoDGARs may include rules that apply to other nonprocurement instruments, when specifically required in order to implement a statute, Executive order, or Governmentwide rule that applies to other nonprocurement instruments, as well as to grants and cooperative agreements. For example, the rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E, applies to all nonprocurement transactions, including grants, cooperative agreements, contracts of assistance, loans and loan guarantees (see definition of “primary covered transaction” at 32 CFR 25.110(a)(1)(i)).

(2) The following is a list of DoDGARs rules that apply not only to grants and cooperative agreements, but also to other types of nonprocurement instruments:

(i) Requirements for reporting to the Defense Assistance Award Data System, in subpart C of this part.

(ii) The rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E.

(iii) Drug-free workplace requirements in 32 CFR part 25, subpart F.

(iv) Restrictions on lobbying in 32 CFR part 28.

(v) Administrative requirements for grants, cooperative agreements, and other financial assistance to:

(A) Universities and other nonprofit organizations, in 32 CFR part 32.

(B) State and local governments, in 32 CFR part 33.

(3) Grants officers should be aware that each rule that applies to other types of nonprocurement instruments (i.e., other than grants and cooperative agreements) states its applicability to such instruments. However, grants officers must exercise caution when determining the applicability of some Governmentwide rules that are included in the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. For example, the Governmentwide implementation of the Drug-Free Workplace Act of 1988 (32 CFR part 25, subpart F) states that it applies to grants, but defines “grants” to include cooperative agree-

ments and other forms of financial assistance.

(c) *Relationship to acquisition regulations.* The Federal Acquisition Regulation (FAR) (48 CFR parts 1–53), the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 201–270), and DoD Component supplements to the FAR and DFARS apply to DoD Components’ procurement contracts used to acquire goods and services for the direct benefit or use of the Federal Government. Policies and procedures in the FAR and DFARS do not apply to grants, cooperative agreements, or other nonprocurement transactions unless the DoDGARs specify that they apply.

§ 21.115 Compliance and implementation.

The Head of each DoD Component that awards or administers grants and cooperative agreements, or his or her designee:

(a) Is responsible for ensuring compliance with the DoDGARs within that DoD Component.

(b) May authorize the issuance of regulations, procedures, or instructions that are necessary to implement DGARS policies and procedures within the DoD Component, or to supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as such regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients. Heads of DoD Components or their designees shall establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(1) Requesting class deviations from the DoDGARs (see § 21.125) or exemptions from the provisions of 31 U.S.C. 6301 *et seq.*, that govern the appropriate use of contracts, grants, and cooperative agreements (see 32 CFR 22.220).

(2) Designating one or more Grant Appeal Authorities to resolve claims, disputes, and appeals (see 32 CFR 22.815).

(3) Reporting data on assistance awards and programs, as required by 31 U.S.C. chapter 61 (see subpart C of this part).

(4) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in part with Federal funds (see 32 CFR 32.32).

§ 21.120 Publication and maintenance.

(a) The DoDGARs are published as chapter I, subchapter B, title 32 of the Code of Federal Regulations (CFR) and in a separate loose-leaf edition. The loose-leaf edition is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (e.g., a reference to § 21.115 in part 21 would be to 32 CFR 21.115).

(b) Updates to the DoDGARs are published in the FEDERAL REGISTER. When finalized, updates also are published as Defense Grant and Agreement Circulars, with revised pages for the separate, loose-leaf edition.

(c) Revisions to the DoDGARs are recommended to the Director of Defense Research and Engineering (DDR&E) by a standing working group. The DDR&E, Director of Defense Procurement, and each Military Department shall be represented on the working group. Other DoD Components that use grants or cooperative agreements may also nominate representatives. The working group meets when necessary.

§ 21.125 Deviations.

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one grant or cooperative agreement, if such deviations are not prohibited by statute, executive order or regulation.

(b) Class deviations that affect more than one grant or cooperative agreement must be approved in advance by the Director, Defense Research and Engineering (DDR&E) or his or her designee. Note that OMB concurrence also is required for deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

(c) Copies of justifications and agency approvals for individual deviations and written requests for class deviations shall be submitted to: Deputy Director, Defense Research and Engineering, ATTN: Research, 3080 Defense Pentagon, Washington DC 20301–3080.

(d) Copies of requests and approvals for individual and class deviations shall be maintained in award files.

§ 21.130 Definitions.

Acquisition. The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed definition at 48 CFR 2.101). In accordance with 31 U.S.C. 6303, procurement contracts are the appropriate legal instruments for acquiring such property or services.

Assistance. The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants and cooperative agreements are examples of legal instruments used to provide assistance.

Contract. See the definition for procurement contract in this section.

Contracting activity. An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

Contracting officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

Cooperative agreement. A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition “grant”), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include “cooperative research and development agreements” as defined in 15 U.S.C. 3710a.

Deviation. The issuance or use of a policy or procedure that is inconsistent with the DoDGARs.